

Arguments/Remarks

Claims 1 through 20 are pending in the present applications.

In the Office Action, claims 1 through 20 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,934,593 to Mellinger (hereinafter "the Mellinger patent"). Applicant respectfully disagrees.

Independent claim 1 is directed to a molded breast pad for a brassiere including one or more first layers being formed from a first material having a first loft associated therewith; and one or more second layers being formed from a second material having a second loft associated therewith differing from that of said first material, wherein the molded breast pad is molded such that a portion thereof is compressed so that said first loft and said second loft are substantially the same.

The Mellinger patent is directed to a strapless brassiere having two breast supports that are each separately applied to the breasts of the wearer. Each breast support has a piece of plastic foam sandwiched between two woven fabric layers that when heated and compressed form flat semi-circular supports with a surrounding border to effect attachment to the chest wall and the breast of the wearer. The Mellinger shows at Fig. 1 through 3, contour foam portions 16 between fabric pieces 20 that are each surrounded by wide flat border 10, flat tabs 12 and narrow border 14.

The Office Action states that Mellinger discloses a molded breast pad for a strapless adhesive brassiere wherein the molded breast pad is molded such that a portion thereof (at 10) is compressed so that the first loft and the second loft are substantially the same (as seen in figure 2 at the bottom at 10). (page 2)

The Applicant respectfully disagrees. The Mellinger patent does not disclose a molded breast pad that is molded such that a portion is compressed so that the first loft and the second loft are substantially the same. In contrast, the Mellinger patent shown at Fig. 2, has a breast cushion 16, having a loft, and a foam cushion 18, having a different loft from the loft of cushion 16, and a separate border at 10 and 14. In the region of the breast cushion, there are two distinct lofts. The second loft that is referred to in the Office Action is not part of the breast cushion at all, but is actually the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69). As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that the first loft and the second loft are substantially the same, as claimed. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 2 depends from claim 1 and is also allowable for the reasons stated above with respect to claim 1. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 3 depends from claim 1 and provides that the first material has elastomeric properties associated therewith.

The Office Action states that the material (18) of Mellinger is woven or knitted fabric and has elastomeric properties that differ from the first material in that they are less elastomeric. The Mellinger patent also discloses that flexibility as being changed by manipulating the loft as claimed. Applicant respectfully disagrees with these statements.

In contrast, the Mellinger patent does not address any elastomeric properties of the material (18) at all. After reviewing the disclosure of the Mellinger patent at column 1, lines 53 through 61, reference numeral 18 refers to a piece of plastic foam and reference numeral 20 refers to knitted or woven fabric

pieces 20. As such, the Mellinger patent does anticipate claim 3 that claims that the first material has elastomeric properties associated therewith.

Dependent claim 4 depends from dependent claim 3 and provides that the second material has elastomeric properties associated therewith that differ from those of the first material.

The Mellinger patent does not address any elastomeric properties associated with the second material. As such, the Mellinger patent does not anticipate claim 4.

Dependent claim 5 depends from claim 1 and provides that the first material has elastomeric properties that depend on said first loft such that the flexibility of the one or more first layers can be changed by manipulating the extent of the first loft.

The Office Action states that Mellinger discloses the flexibility as being changed by manipulating the loft as claimed. The compressed portion (at 10 as seen in figure 2) has different elastomeric properties (in that they are stiffer) than the remaining portion of the molded breast pad. Applicant disagrees with this conclusion.

The Mellinger patent does not address the elastomeric properties of any material set forth in the patent and thus does not relate any elastomeric properties to a first loft such that the flexibility of one or more first layers can be exchanged by manipulating the extent of the first loft.

The portion of the garment that is being addressed in the Mellinger patent at lines 57 through 64 is actually the border 10 and 14 and the tabs that are not part of the foam cushion 16 as discussed above. Further, the disclosure of the Mellinger patent only states that "this produces a firm, relatively stiff, border

needed to provide the proper support. However, the quality of softness and flexibility of the woven fabric and plastic foam necessary to the comfort are still maintained". (column 1, lines 60 through 64). The characteristic that the Mellinger patent is referring is flexibility and stiffness not elastomeric quality. Flexibility and stiffness refer to the ability to bend, not to the ability to expand and retract. As such, the Mellinger patent does not anticipate claim 5. Withdrawal and reconsideration of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 6 depends from independent claim 1 and provides that the compressed portion of the molded breast pad has different elastomeric properties than a remaining portion of the molded breast pad.

The Mellinger patent does not disclose a garment having a portion of the breast pad that is compressed. The portion of the garment that is being addressed in the Mellinger patent at lines 57 through 64) is actually the border 10 and 14 and the tabs that are not part of the breast cushion 16 as discussed above. Further, the disclosure of the Mellinger patent only states that "this produces a firm, relatively stiff, border needed to provide the proper support. However, the quality of softness and flexibility of the woven fabric and plastic foam necessary to the comfort are still maintained". (column 1, lines 60 through 64). The characteristic that the Mellinger patent is referring is flexibility and stiffness not the elastomeric quality. Flexibility and stiffness refer to the ability to bend, not to the ability to expand and retract. As such, the Mellinger patent does not anticipate claim 6. Withdrawal and reconsideration of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 7 depends from independent claim 1 and provides for line of demarcation separating the compressed portion from the rest of the molded breast pad.

The Office Action states that " the molded breast pad of Mellinger includes a line of demarcation (at 24) separating the compressed portion from the rest of the breast pad". The line of demarcation is formed on a body contacting surface of the pad so that the opposing surface of the breast pad is substantially smooth.

Line 24 is a semi-circular edge of the contour foam cushion with the border 10 and 14. This line is not a line of demarcation separating a compressed portion of the breast pad from the rest of the molded breast pad. In contrast, the line 24 separates the foam cushion from the compressed border 10, 14 and tabs 12 of the garment. As such, the Mellinger patent does not disclose a line of demarcation separating the compressed portion from the rest of the molded breast pad, as claimed.

Dependent claim 8 depends from claim 7 and provides that the line of demarcation is formed on a body contacting surface of the pad such that an opposing surface of the molded breast pad is substantially smooth.

Claim 8 is not anticipated for the reasons discussed with respect to dependent claim 7 from which it depends and for the reasons discussed with respect to independent claim 1.

Claim 9 is directed to a brassiere having the molded breast pad of claim 1.

Claim 9 is not anticipated by the Mellinger patent for the reasons discussed above with respect to claim 1. The Mellinger patent does not disclose a brassiere having a molded breast pad that is molded such that a portion is compressed so that a first loft and the a second loft are substantially the same. In contrast, the Mellinger patent shown at Fig. 2, only discloses breast supports that each has a breast cushion 16 having a loft, and a foam cushion 18 that has a loft different from the loft of cushion 16 and a separate border at 10 and 14. The second loft that is referred to in the Office Action is not part of the breast pad

at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall (column 1, lines 65 through 69). As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that the first loft and the second loft are substantially the same, as claimed. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 10 is directed to a molded breast pad having a first part having a relatively full loft; a second part having a loft relatively reduced from the loft of the first part, wherein the first part and the second part are both formed from a material block having one or more first layers of a first material and one or more second layers of a second material.

The Mellinger patent does not disclose a molded breast pad having a second part with a loft relatively reduced from the loft of the first part. As discussed above, the Mellinger patent discloses at Fig. 2, a breast cushion 16 having a plastic foam 18 that has a single loft and a separate border at 10 and 14 that is compressed. The second loft that is referred to in the Office Action is not part of the breast pad at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69). As such, the Mellinger patent does not disclose a molded breast pad having a second part having a loft relatively reduced from the loft of the first part, as claimed. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 11 depends from claim 10 and is also allowable for the reasons stated above with respect to claim 10. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 12 depends from claim 10 and provides that the first material has elastomeric properties associated therewith.

The Office Action states that the material (18) of Mellinger is woven or knitted fabric and has elastomeric properties that differ from the first material in that they are less elastomeric. Mellinger also discloses that flexibility as being changed by manipulating the loft as claimed. Applicant respectfully disagrees with these statements.

In contrast, the Mellinger patent does not address any elastomeric properties of the material (18) at all. After reviewing the disclosure of the Mellinger patent at column 1, lines 53 through 61, reference numeral 18 refers to a piece of plastic foam and reference numeral 20 refers to knitted or woven fabric pieces 20. As such, the Mellinger patent does anticipate claim 12 that claims that the first material has elastomeric properties associated therewith.

Dependent claim 13 depends from dependent claim 12 and provides that the second material has elastomeric properties associated therewith that differ from those of the first material.

The Mellinger patent does not address any elastomeric properties associated with the second material or the first material. As such, the Mellinger patent does not anticipate claim 13.

Dependent claim 14 depends from claim 10 and provides that the first material has elastomeric properties that depend on the loft thereof such that the flexibility of the one or more first layers can be changed by manipulating or changing the loft.

The Mellinger patent does not address the elastomeric properties of any material discussed in the patent and thus does not relate any elastomeric properties to a loft such that the flexibility of one or more first layers can be exchanged by manipulating the extent of the first loft. The only property that is addressed in the Mellinger patent is the flexibility or stiffness of the border 10 and

14 and tab 12 of the garment. Flexibility and stiffness refer to the ability to bend, not to the ability to expand and retract. As such, the Mellinger patent does not anticipate claim 14.

Dependent claim 15 depends from independent claim 10 and provides that the second part has elastomeric properties that differ from the elastomeric properties of the first part.

The Mellinger patent does not address any elastomeric properties associated with the second part or the first part. As such, the Mellinger patent does not anticipate claim 15. Withdrawal and reconsideration of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 16 depends from independent claim 10 and provides for line of demarcation separating the first part from the second part.

As discussed above, line 24 is a semi-circular edge of the contour foam cushion. This line is not a line of demarcation separating the first part of the molded breast pad from the part of the molded breast pad. In contrast, line 24 separates the foam cushion from the compressed border 10, 14 and tabs 12 of the garment. As such, the Mellinger patent does not disclose a line of demarcation separating the first part from the second part, as claimed.

Dependent claim 17 depends from independent claim 16 and provides that the line of demarcation is formed on a body contacting surface of the pad such that an opposing surface of the molded breast pad is substantially smooth.

Claim 17 is not anticipated for the reasons discussed with respect to dependent claim 16 from which it depends and for the reasons discussed with respect to independent claim 1. The line of demarcation is not formed on a body

contacting surface of the pad. In contrast, it is formed on an edge of the cushion and the border. As such, the Mellinger patent does not anticipate claim 17.

Claim 18 provides for a brassiere having the molded breast pad of claim 10.

Claim 18 is not anticipated by the Mellinger patent for the reasons discussed above with respect to claim 9. The Mellinger patent does not disclose a brassiere having a molded breast pad that is molded such that a portion is compressed so that the first loft and the second loft are substantially the same. In contrast, the Mellinger patent shown at Fig. 2 only discloses breast supports that each have a breast cushion 16 having a plastic foam 18 that has a single loft and a separate border at 10 and 14 that is compressed. The second loft that is referred to in the Office Action is not part of the breast pad at all, but is actually a portion of the border to which an adhesive is applied to attach the garment to the chest wall. (column 1, lines 65 through 69). As such, the Mellinger patent does not disclose a molded breast pad such that a portion thereof is compressed so that the first loft and the second loft are substantially the same, as claimed. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 19 is directed to a method of forming a molded breast pad having the steps of providing a material block having one or more first layers of a first material and one or more second layers of a second material, the first material and the second material each having different lofts associated therewith; positioning the material block in a molding apparatus such that the molding apparatus can interact with the material block; causing the molding apparatus to interact with the material block to form one or more three-dimensional breast pads with a portion thereof being effected such that the portion has a relatively reduced loft, wherein the reduced loft portion of the three-dimensional breast

pad has elastomeric properties associated therewith that are distinct from a remaining portion of the three-dimensional breast pad.

The Mellinger patent, as discussed above, does not disclose a garment that forms one or more three-dimensional breast pads with a portion thereof being effected such that the portion has a relatively reduced loft, wherein the reduced loft portion of the three dimensional breast pad has elastomeric properties associated therewith that are distinct from a remaining portion of the three-dimensional breast pad.

The Mellinger patent discloses a cushioning pad 16 having a loft and plastic foam 18 with a different loft from pad 16, such that the elements 16 and 18 have two distinct lofts. (Figs. 1 and 2) The garment also has a border 10 and 14, separate from the pad 16 that lies against the chest wall. Portions 10, 14 and tabs 12 of the Mellinger patent are made stiffer and less flexible. There is not any recitation regarding the elastomeric properties of any material of the Mellinger patent. As such, the Mellinger patent does not anticipate claim 19. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

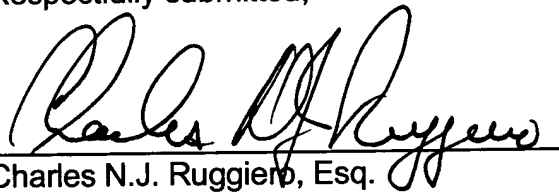
Claim 20 depends from independent claim 19 and provides that each of the one or more three-dimensional breast pads has a line of demarcation separates the reduced loft portion from the rest of the three dimensional breast pad.

As discussed above, line 24 is a semi-circular edge of the contour foam cushion. The Mellinger patent does not disclose any breast pad that has a line of demarcation that separates a reduced loft portion from the rest of the three dimensional breast pad. In contrast, line 24 separates the foam cushion from the compressed border 10, 14 and tabs 12 of the garment. As such, the Mellinger patent does not disclose one or more three-dimensional breast pads that have a

line of demarcation separating the compressed portion from the rest of the molded breast pad, as claimed.

In view of the foregoing, Applicant respectfully submits that all claims presented in the application patently distinguish over the cited prior. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed on to allowance.

Respectfully submitted,



Charles N.J. Ruggiero, Esq.
Reg. No. 28,468
Attorney for the Applicant
Ohlandt, Greeley, Ruggiero & Perle,
L.L.P.
One Landmark Square, 10th Floor
Stamford, CT 06901-2682
Tel: 203-327-4500
Fax: 203-327-6401

May 7, 2004
Date